

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHAMOLI KAPOOR,

Plaintiff,

v.

MICHAEL MATTHEWS JEWELERS OF
KINGS PLAZA, LLC, *et al.*,

Defendants.

ORDER

22-CV-05027 (HG)

HECTOR GONZALEZ, United States District Judge:

This order addresses various issues related to discovery and the procedural posture of this case. The Clerk of Court has entered a default, pursuant to Rule 55(a), against the following three Defendants for failing to timely respond to Plaintiff's original complaint: Michael Matthews Jewelers of Kings Plaza, LLC, Omar Jewelers Inc., and Arif Mahmod. ECF Nos. 18–20. Plaintiff's original complaint, however, asserted against these Defendants only claims under the Fair Labor Standards Act and the New York Labor Law. ECF No. 1. After the Clerk of Court found that these Defendants were in default, however, Plaintiff filed an amended complaint asserting new claims against these Defendants under the federal Trafficking Victims Protection Act and New York state laws related to human trafficking. ECF No. 32.

Pursuant to Rule 5, even when a party has failed to appear, an opposing party must serve on that non-appearing party any “pleading that asserts a new claim for relief.” Fed. R. Civ. P. 5(a)(2). Accordingly, multiple judges in this District have held that the filing of an amended complaint that asserts new claims against a defendant that has defaulted is grounds to vacate the entry of default against such a defendant. *See Ramirez v. Clinton Panaderia, Inc.*, No. 20-cv-6143, 2023 WL 2061413, at *5 (E.D.N.Y. Feb. 17, 2023) (holding that “[p]laintiff's certificates of default were mooted by her [a]mended [c]omplaint”); *Falls Lake Nat'l Ins. Co. v. DNA*

Plumbing Contractors, Inc., No. 20-cv-2798, 2021 WL 2702571, at *2 n.2 (E.D.N.Y. July 1, 2021) (explaining that “[p]laintiff’s motion for default judgment is mooted by the subsequent filing of the [a]mended [c]omplaint and failure to obtain new entries of default against the non-appearing defendants”).

As a result of Plaintiff’s filing an amended complaint asserting new claims, the Court respectfully directs the Clerk of Court to vacate the certificates of default for Michael Matthews Jewelers of Kings Plaza, LLC, Omar Jewelers Inc., and Arif Mahmod. ECF Nos. 18–20. Plaintiff shall file proposed summonses for those Defendants no later than seven days after the Clerk of Court vacates the certificates of default.

Since there are multiple parties who have not yet appeared and, by virtue of Plaintiff’s amended complaint and this order, have not yet defaulted, the Court cannot refer this action to a magistrate judge for all purposes despite the fact that the parties who have appeared have consented to the jurisdiction of a magistrate judge. *See* ECF No. 37. However, since the three remaining Defendants may eventually also consent to the jurisdiction of a magistrate judge, the Court finds that good cause exists not to set a deadline for the completion of all discovery, as Rule 16(b) requires under ordinary circumstances. *See* Fed. R. Civ. P. 16(b)(3)(A). Instead, the Court hereby sets the following deadlines related to discovery:

- To the extent Plaintiff has not already served initial disclosures required by Rule 26(a)(1), she shall do so on or before March 23, 2023.
- To the extent any Defendants have not already served initial disclosures required by Rule 26(a)(1), they shall do so on or before March 30, 2023.
- The parties shall serve initial requests for the production of documents, or other information covered by Rule 34, along with their initial interrogatories, on or before March 30, 2023. This deadline is without prejudice to the parties serving additional requests for the production of documents prior to the end of the fact discovery deadline later set by the Court or any magistrate judge to whom this case may be assigned in the future.

- The parties shall serve their written responses and objections to any opposing party's requests for production or interrogatories on or before May 1, 2023, and shall make an initial production of some documents by that date. The parties may continue to produce documents responsive to an opposing party's request on a rolling basis after that date, based on the amount of time reasonably necessary to produce responsive documents.
- The parties shall file on or before May 15, 2023, any pre-motion letters seeking to amend a pleading or to join new parties, under circumstances where such relief is not allowed as of right, along with a copy of the party's proposed amended pleading. Any such exchange of pre-motion letters must comply with Section IV.A of the Court's Individual Practices.
- The parties shall file a joint letter no longer than five pages on or before May 22, 2023, describing with specificity the discovery that the parties have conducted as of that date, and identifying any discovery disputes existing as of that date, along with each party's respective positions on any such disputes. The Court will deem the parties to have waived any discovery disputes that arose prior to the filing of their joint letter that the parties fail to raise in their letter.

Pursuant to the parties' joint letter that accompanied their proposed case management plan, *see* ECF No. 34, the Court will enter a separate order referring the parties to the Eastern District of New York's Court-Annexed Mediation Program. The parties must pursue their discovery obligations described above concurrently with their mediation, and the Court will not extend these deadlines solely because the parties have been mediating or have been engaging in other settlement efforts. The parties must make any requests to adjourn any deadline described in this order at least three business days in advance of the deadline, in accordance with Section I.D of the Court's Individual Practices, and they should expect the Court to deny any extension requests made after a deadline has already passed.

SO ORDERED.

/s/ Hector Gonzalez
HECTOR GONZALEZ
United States District Judge

Dated: Brooklyn, New York
March 9, 2023